

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Science Research Associates, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1974 & 1975. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Science Research Associates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Science Research Associates, Inc.
155 North Wacker Dr.
Chicago, IL 60606

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of October, 1981.





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STATE TAX COMMISSION

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of :
Science Research Associates, Inc. :
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Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Frank L. Bruno the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

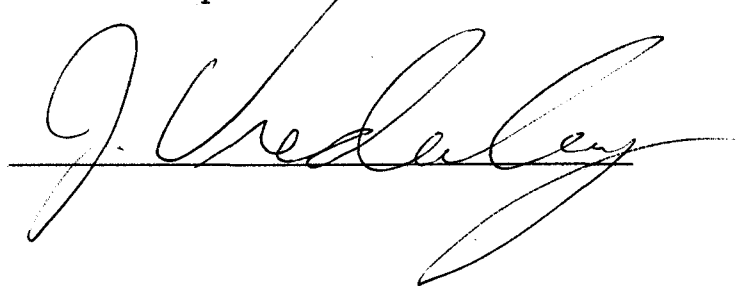
Frank L. Bruno
IBM Corporation
Income Tax Dept.
Armonk, NY 10504

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
23rd day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 23, 1981

Science Research Associates, Inc.
155 North Wacker Dr.
Chicago, IL 60606

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Frank L. Bruno
IBM Corporation
Income Tax Dept.
Armonk, NY 10504
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SCIENCE RESEARCH ASSOCIATES, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the Tax Law	:	
for the Years 1974 and 1975.	:	

Petitioner, Science Research Associates, Inc., 155 North Wacker Drive, Chicago, Illinois 60606, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1974 and 1975 (File No. 23240).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 7, 1980 at 1:30 P.M. Petitioner appeared by Thomas J. Karle, Esq., Secretary and Counsel, and by Frank L. Bruno of International Business Machines Corp., petitioner's parent corporation. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the petition of Science Research Associates, Inc. was filed in a timely manner.

II. Whether petitioner's activities within New York State during the years at issue constituted solicitation of orders, as defined by section 381 et seq. of Title 15 of the United States Code, thereby precluding this State from imposing a tax on petitioner's income.

FINDINGS OF FACT

1. On June 9, 1978, the Audit Division issued to petitioner, Science Research Associates, Inc. ("SRA"), two notices of deficiency, asserting additional franchise tax due under Article 9-A for the years 1974 and 1975 in the respective amounts of \$19,025.67 and \$26,511.72, with interest thereon. The notice for 1975 also imposed a penalty under section 1085(a)(1) of the Tax Law in the amount \$6,627.93.

2. By letter dated August 28, 1978, Mr. Mark T. Dowd, petitioner's treasurer, objected to the aforementioned deficiencies and set forth the reasons for petitioner's position. The letter stated, in pertinent part:

"In accordance with Article 27, Section 1089 of the New York State Tax Law, Ch. 60, C.L., Science Research Associates, Incorporated (SRA) protests this assessment and the conclusions derived from the audit."

Said letter was stamped received by the Corporation Tax Bureau on September 5, 1978, and assigned petition number 1224.

3. SRA is a Delaware corporation, with its headquarters in Chicago, Illinois. Its principal business is the development and sale of educational aids and programs, centering around its reading materials system.

4. Until June 30, 1974, SRA rented office space at Harrison, New York.¹ Thereafter, salesmen assigned to territories in New York reported to the SRA office in New Jersey; at least some of such salesmen resided in this State. Those who sold materials to colleges and universities reported to the Eastern Region College office in Virginia.

5. During the years at issue, salesmen operated automobiles on lease by SRA and had within their possession samples which were not for sale to customers.

¹ SRA made a franchise tax report for the short period January 1, 1974 through June 30, 1974. The deficiency asserted for 1974 was for the full year less the payment made by petitioner for the short period.

6. The principal product marketed by petitioner is a "laboratory", a box containing reading or mathematical selections (for example), color-coded to the varying ability levels of the students. Also contained is a checklist to assist the teacher in assigning students to the levels, and a manual which fully explains use of the product.

7. Most frequently, customers ordered petitioner's products through a catalog, forwarded their orders to the Chicago office and received the materials therefrom, without having any contact with a sales representative. During the period at issue, approximately sixty to eighty percent of all SRA's sales resulted from such catalog orders.

The remaining sales were accomplished through the use of regional sales forces. A salesman called on a customer after receiving a "lead" from the Chicago office, or upon request of a customer who had received the product and desired further information. In the former case, if the customer decided to purchase petitioner's products subsequent to the salesman's presentation, he completed the order form himself and forwarded it to Chicago. In the latter case, the salesman met with the teacher (or teachers) and, in an effort to ensure that he or she had sufficient comprehension of the materials to initiate and continue the SRA program, might highlight salient portions of the manual, although little technical information beyond that contained in the manual was imparted.

8. All orders were made through and fulfilled by the Chicago office; salesmen had no authority to accept or reject orders. Complaints and adjustments were similarly attended to at Chicago headquarters, notwithstanding that a customer might occasionally voice his complaint to a sales representative.

9. Once a teacher, school or district had purchased SRA products, any re-ordering was typically done through the Chicago office. When a customer ceased using an SRA program, a salesman generally did not make a follow-up call since he would previously have been made aware of the customer's dissatisfaction and decision.

10. In the event several teachers from the same school or district expressed an interest in SRA's products, a salesman might set up displays and give an informal group presentation. An educational consultant has also, from time to time, assisted teachers who experienced problems in utilizing SRA materials, for example by observing a class and subsequently offering comments thereon.²

11. One regional sales manager was assigned to oversee the New York State sales territories. His function was to coordinate and facilitate the solicitation procedure in his area in order to produce the most efficient results possible. He had, on occasion, made presentations to faculty groups.

12. Most sales representatives possessed background and experience in the educational field and were provided training by SRA in sales techniques.

13. Petitioner's sales representatives have attended and have displayed SRA's products at educational shows and conventions in New York, such as the annual convention of the National Catholic Education Association.

CONCLUSIONS OF LAW

A. That subdivision (b) of section 1089 of the Tax Law provides in relevant part:

"Within ninety days...after the mailing of the notice of deficiency authorized by section one thousand eighty-one, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency."

² During 1976 (a year not herein at issue), this consultant made a two-day, city-wide presentation in Buffalo, which included the conduct of a mock class.

That petitioner's letter, received by the Corporation Tax Bureau on September 5, 1978, was properly deemed by said Bureau to be a timely petition for redetermination of the asserted deficiencies.

B. That Title 15 U.S.C. section 381 states in pertinent part:

"(a) No State...shall have power to impose...a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person...are either, or both, of the following:

"(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

"(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

"(b) The provisions of subsection (a) shall not apply to the imposition of a net income tax by any State...with respect to --

"(1) any corporation which is incorporated under the laws of such State; or

"(2) any individual who...is domiciled in, or a resident of, such State."

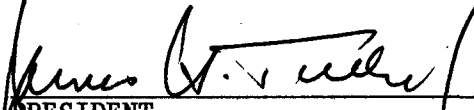
C. That the sum total of petitioner's activities in New York State during the period July 1, 1974 through December 31, 1975 exceeded the activities of the petitioners as described in Gillette Co. v. State Tax Commission, 56 A.D.2d 475, affd, 45 N.Y.2d 846 (1978), and Matter of National Tires, Inc., State Tax Comm'n, October 17, 1980, and went beyond the mere solicitation of orders. Petitioner's sales representatives operated leased automobiles in this State in connection with their business activities; petitioner owned property in this State (samples and such inventory as was exhibited in displays); and petitioner gave customers technical advice on use of its products proffered by sales representatives with expertise in the field of education.

D. That the petition of Science Research Associates, Inc. is hereby denied, and the notices of deficiency issued June 9, 1978 are sustained in full.

DATED: Albany, New York

OCT 23 1981

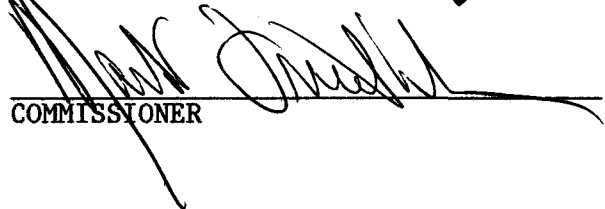
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER